

BEST AVAILABLE COPY

COPY

DOCKET NO: 226231US0



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

CAROLE GUIRAMAND, ET AL.

: EXAMINER: OGDEN

SERIAL NO: 10/245,569

:

FILED: SEPTEMBER 18, 2002

: GROUP ART UNIT: 1751

FOR: FOAMING COSMETIC CREAM

:

DECLARATION UNDER 37 C.F.R. 1.132

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

I, Carole Guiramand, hereby declare:

1. I am employed by L'ORÉAL as an engineer and have experience in the field of preparing and analyzing cosmetic and/or dermatological compositions.
2. I am familiar with the specification of the above-identified patent application.
3. The following observations and experiments were carried out by me or under my direct supervision and control.
4. A direct comparison of foaming creams made according to the present invention and the soap composition described in Example 2 of U.S. 6,362,146 was performed.
5. Example 1, Example 2, and Example 3 as described in Table 1 page 22 of the application, designated 657017 11, 657017 12 E2, and 657017 E3, respectively were prepared according to the description in the above-identified application. Example 2 of U.S. 6,362,146 was made as described in the patent. The resulting compositions are depicted in the attached Exhibit 1.

6. As evident from this Exhibit, the composition of U.S. 6,362,146 is a solid but not a cream as 657017 11, 657017 12 E2, and 657017 E3 (Examples 1-3 in the specification). Therefore, the compositions are clearly different.

7. The undersigned declares further that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Guiramand
Name

Carole Guiramand
Signature

28 - 09 - 2004
Date



BEST AVAILABLE COPY

EX DE BREVET
US 6,362,148 B1
UNILEVER

657017 11

657017 12 E2

657017 13 E2



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

NOV 30 2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/245,569	09/18/2002	Carole Guiramand	226231US0	7233
22850	7590	05/25/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			OGDEN JR, NECHOLUS	
		ART UNIT	PAPER NUMBER	
		1751		

DATE MAILED: 05/25/2004

COPY

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

NOV 30 2004
OPIE
JCB

Application No.	Applicant(s)	
10/245,569	GUIRAMAND ET AL.	
Examiner	Art Unit	
Necholus Ogden	1751	

~ The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 14-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3-3-04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

Response to Amendment

Claim Rejections - 35 USC § 112

1. Claim 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn.

2. Claims 1-12 and 14-29 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Macaulay (6,362,146).

Macaulay discloses a personal washing composition comprising a surfactant such as anionic, nonionic, soaps and mixtures thereof; polymeric deposition aid; and encapsulated sunscreen (col. 2, lines 3-29). Macaulay further teaches encapsulated matrix wax sunscreens (col. 6, lines 5-25). Example 2 teaches 8.63% lauric and myristic acid; 10.76% stearic acid; potassium hydroxide; 2.0% polyethylene glycol distearate; 13.00% glycerol; Jaguar C-13-2; and sunscreen capsules comprising 25.4% waxes.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Macaulay is silent with respect to the Para crystalline phase, storage modulus, complex modulus and loss modulus. However, it would have been obvious to one of ordinary skill in the art to inherently expect the compositions of Macaulay to exhibit the characteristics of the claimed invention because each of the claimed components are required and taught in their requisite proportions.

With respect to the process claims the examiner contends that even though the product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

3. Claims 1-12 and 14-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon et al (6,033,680).

Dixon et al disclose a liquid cleansing composition comprising 5 to 30 parts of a lipid skin moisturizing agent; 0.3 to 5 parts of a cationic polymer; 5 to 30 parts of a synthetic surfactant; and up to 15 parts of a fatty acid soap (see columns 2-3). With respect to the lipid agents, Dixon et al teach that waxes are typical ingredients (col. 6, lines 22-33). With further respect to the surfactant ingredients, Dixon et al teach that nonionic surfactants include alkyl polyglucosides and optional ingredients include glycerol, polyoxypropylene glycerol, and sucrose (col. 13-14). Dixon et al include adjunct materials such as preservatives and medicaments (col. 15, lines 10-25). See also example and claims.

Dixon et al do not specifically teach each of the claimed components in an example. However, it would have been obvious to one of ordinary skill in the art to combine the components to specifically teach the claimed invention. Furthermore, it is held the non-preferred embodiments may be indicative of obviousness. A reference may be relied

upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).

Response to Arguments

4. Applicant's arguments filed 3-03-04 have been fully considered but they are not persuasive.

Applicant argues that Macaulay does not describe the hexagonal phase limitation. The examiner considers the phase limitation an inherent limitation that one of ordinary skill in the art would inherently expect the composition to exhibit the desired phase because they teach composition of soap, wax and water as required by the claimed invention. Furthermore, applicant has not shown any data to the contrary.

Applicant argues that Dixon et al do not teach the claimed invention in an example.

The examiner contends that it would have been obvious to one of ordinary skill in the art to combine the components to specifically teach the claimed invention. Furthermore, it is held the non-preferred embodiments may be indicative of obviousness. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments.

Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T and Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Necholus Ogden
Primary Examiner
Art Unit 1751

No
5-14-04

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- BLACK BORDERS**
- IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- FADED TEXT OR DRAWING**
- BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- SKEWED/SLANTED IMAGES**
- COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- GRAY SCALE DOCUMENTS**
- LINES OR MARKS ON ORIGINAL DOCUMENT**
- REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.